

In the High Court of Judicature at Madras

Dated: 11.01.2007

Coram:

The Honourable Mr.Justice P.SATHASIVAM
and
The Honourable Mr.Justice N.PAUL VASANTHAKUMAR

Writ Petition No.39606 of 2006
and M.P.No.1 of 2006

J.Kalpana

..Petitioner

...vs...

1. Member Secretary,
Chennai Metropolitan Development Authority,
Chennai-600 008.

2. The Commissioner,
Ambattur Municipality,
Chennai-600 058.

3. T.V.Narayanan

..Respondents

Writ Petition filed under Article 226 of the Constitution of India,
for issuance of a Writ of Mandamus, as stated therein.

For Petitioner : Mr.P.S.Seetharaman

For Respondents : Mr.J.Ravindran for R1

Mr.K.Elango, Spl.G.P., for R2

Mr.M.Stalin for R3

ORDER

(Order of the Court was made by P.SATHASIVAM, J.,)

The petitioner has approached this court to issue a writ of mandamus directing the first and second respondents to take immediate action as per the law against the unauthorised construction being carried on without plan sanctioned either by the first or second respondent at H-31, Central Avenue, Korattur, Chennai-80.

2. Heard the learned counsel for the petitioner as well as respondents.

3. Based on the various averments made in the affidavit filed in support of the above writ petition, we directed the second respondent, Commissioner, Ambattur Municipality to submit a report and pursuant to our direction, the said Municipality has submitted its report, which reads as under.

" Plot No.H31 and H32 are Twin Houses. Green Shaded portions in H31 and H32 are constructed by TNHB while selling to the plot owners.

In Plot No.H32 Yellow Shaded Portions are Unauthorised Constructions. In Plot No.H31 Shop Portions are Constructed with deviation from the approved plan. The deviated portions are shaded with blue colors and the approved portions shown with black shade. Existing sewerage line Inspection chamber for the plot No.H31 and H32 are shown in the sketch. Sewerage line for plot No.H32 passed through plot No.H31 as shown in the sketch.

In plot No.H31, over the sewerage line, no building is there in ground floor. Between the shops shaded black in plot No.H31 and common wall of plot No.H31 and H32 flooring is done covering the sewerage line. Inspection chambers is projecting over the flooring in order to inspect the chamber.

In plot No.H31 the first floor building is constructed as shown in the sketch with deviation from the approved drawing which will not affect sewerage line".

In addition to the above report, a sketch mentioning the required details has also been submitted including the sewerage line running across plot No.H31.

4. The report of the Commissioner shows that in plot No.H31, first floor of the building is not in accordance with the approved drawing; however, which will not affect the sewerage line. We also verified the sketch furnished by the Commissioner. The report also reveals that the building constructed in plot No.H32 is an unauthorised one. Apart from the above information furnished by the Commissioner, Ambattur Municipality, it is also relevant to refer the civil proceedings, namely, O.S.277 of 2004, which was filed by the very same petitioner before the District Munsif Court, Ambattur, including the 3rd respondent herein as 1st defendant, Ambattur Municipality as 2nd defendant and the Tamil Nadu Electricity Board as 3rd defendant. The contesting parties, namely, plaintiff and the 1st defendant filed a compromise memo on 23.08.2005. As per the said memo,

the 1st defendant (3rd respondent herein) should not put up any structure on the common sewerage line connecting the toilets in plot No.H31 and H32. In the same paragraph, it was agreed that the plaintiff (petitioner herein) has every right to inspect the pipe lines and chamber as and when required and to do necessary repairs if need arises. The said memorandum of compromise dated 23.08.2005 was recorded by the learned District Munsif and the suit has been disposed of on the above terms.

5. In view of the above factual information as well as the report of the Commissioner, Ambattur Municipality, in order to avoid future problem, we directed the 3rd respondent to file an affidavit of undertaking that he will not put up any additional construction in the ground floor of the premises in question over the common sewerage. Pursuant to the said direction, the 3rd respondent filed an affidavit on 11.01.2007. The relevant averments in para 2 reads as under:

"2. I state that I have put up construction in the first floor of the said premises without disturbing the sewerage line. In that regard, I undertake before this Honourable Court that I will not put up any additional construction in the ground floor of my premises over the common sewerage line".

The above undertaking is hereby recorded.

In view of the above discussion, factual details mentioned above and the compromise decree of the civil Court, we are of the view that no further direction is required in this writ petition. However, it is made clear that if there is any deviation or violation of the approved plan, or the construction is not in accordance with the Rules, the 2nd respondent is free to proceed in accordance with law against the petitioner as well as the 3rd respondent. Accordingly, the writ petition is closed. No costs. Consequently, M.P.No.1 of 2006 is also closed.

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

kh

To

1. Member Secretary,
Chennai Metropolitan Development Authority,
Chennai-600 008.

2. The Commissioner,
Ambattur Municipality,
Chennai-600 058.

1 cc To Mr.M.Stalin, Advocate, SR.2239.

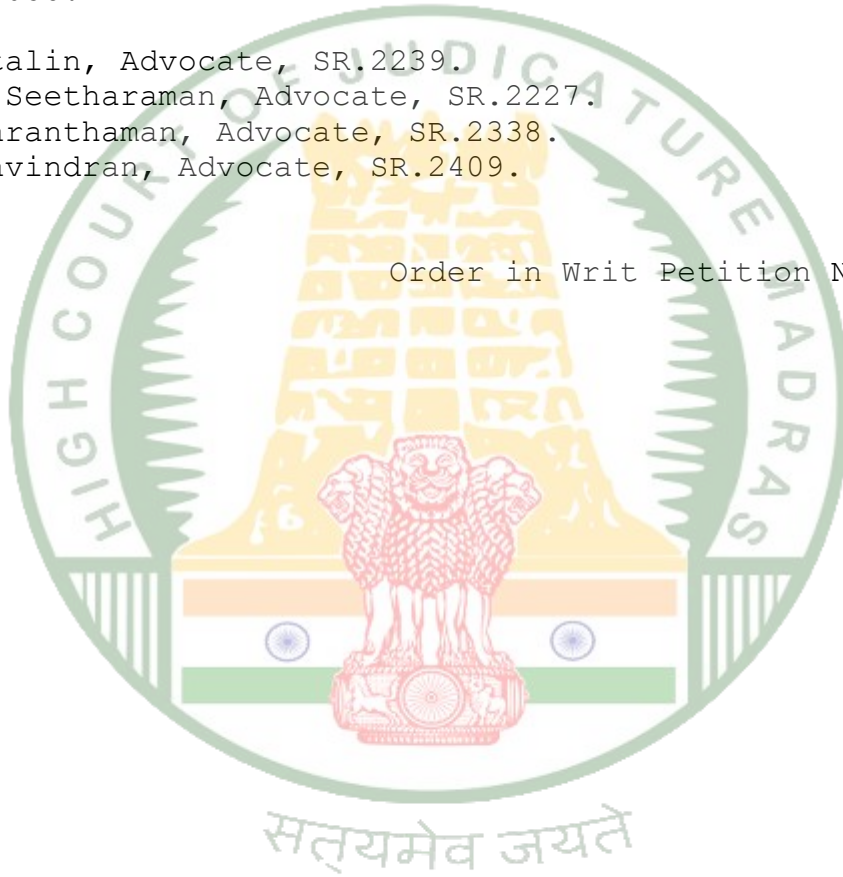
1 cc To Mr.P.S.Seetharaman, Advocate, SR.2227.

1 cc To Mr.I.Paranthaman, Advocate, SR.2338.

1 cc To Mr.J.Ravindran, Advocate, SR.2409.

Order in Writ Petition No.39606 of 2006

KLT (CO)
RVL 22.01.2007



WEB COPY